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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,057	09/05/2003	Teng Xu	2003B093	1840

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EXAMINER

JOHNSON, CHRISTINA ANN

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,057

Applicant(s)

XU ET AL.

Examiner

Christina Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-151 is/are pending in the application.
- 4a) Of the above claim(s) 49-91 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 and 92-151 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-48 and 92-151, in the reply filed on November 9, 2005 is acknowledged. The traversal is on the ground(s) that there is no burden of search. This is not found persuasive. As discussed in the previous office action, the two groups of inventions are classified separately. A search for group I is not required for group II and vice versa. Therefore, search and examination of the entire application cannot be conducted without serious burden.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 49-91 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 9, 2005.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-48 and 92-151 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claims 1-48 and 92-151, the phrase "clay-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those

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encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable.

See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-48 and 92-151 are rejected under 35 U.S.C. 102(b) as being anticipated by Martens et al.

Martens et al. (US 6,440,894) discloses a catalyst composition comprising a non-zeolitic molecular sieve, an inorganic oxide matrix, and a matrix material (column 3, lines 50-55). Suitable molecular sieve materials include SAPO-5, -8, -11, -16, -17, -18, -20, -31, -34, -35, -36, -37, -40, -41, -42, -44, -47, -56, and mixtures thereof (column 6, lines 50-65). Suitable inorganic binders include aluminum chlorhydrol which will convert to aluminum oxide (column 7, line 40 – column 8, line 10). Suitable matrix materials include kaolin clays such as Dixie, McNamee, Georgia, and Florida clays (column 8, lines 10-35).

It is taught that the catalyst is prepared by forming a slurry of the non-zeolitic molecular sieve, inorganic oxide sol, matrix material, and water, followed by spray drying, and calcination (columns 8-10). It is taught that the spray dried particles have a particle size of 50-200 microns (column 9, lines 60-65).

The reference does not specifically detail the metal content of the clay materials used. However, the instant specification details that Dixie, McNamee, Georgia, and Florida clays are examples of kaolin clays which could be used in the instant invention. Refer to page 26 of the instant specification. Therefore, it is the position of the examiner that, because the reference details the use of the same clay materials from the same source, the matrix material taught by the reference would inherently meet the low metal levels claimed. When the examiner has reason to believe that the functional language asserted to be critical for establishing novelty in claimed subject matter may in fact be an inherent characteristic of the prior art, the burden of proof is shifted to Applicants to prove that the subject matter shown in the prior art does not possess the characteristics relied upon. *In re Fitzgerald et al.* 205 USPQ 594.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Martens et al.

Response to Arguments

8. Applicant's arguments filed November 9, 2005 have been fully considered but they are not persuasive.

Applicant argues that the metal content of the clays is not an inherent property, regardless of the fact that the clays taught by the prior art are from the same points of origin taught as suitable in the instant case. This argument has been considered but is not persuasive. Applicant has failed to provide any evidence to support this argument, such as providing data from different clay samples from the same point of origin which

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have different metal contents, some of which would not meet the instant claims. In the absence of any evidence tending to show that the claimed metal contents would not in fact be inherent, the rejection is maintained.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Johnson whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Christina Johnson
Primary Examiner
Art Unit 1725

1/10/06

CAJ
January 10, 2006